BUSINESS

Terry Savage: Social Security relief imminent for recipients of unexpected overpayments

By TERRY SAVAGE
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New Social Security Commissioner Martin O'Malley has just taken a major step to offer immediate relief to those facing clawbacks from his agency.

Economist Larry Kotlikoff and I detailed these horror stories on "60 Minutes" last November — and in our book "Social Security Horror Stories." Millions of Americans have been or are due to be contacted by the Social Security Administration (SSA) with a demand to repay past benefits based on SSA's mistaken calculations, some going back as far as 30 years.

In a message to SSA employees, O'Malley announced the first of several initiatives to make the system work more fairly. His words speak volumes:

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"Effective today, instead of initially withholding 100% of a Social Security benefit to recover an overpayment, we are changing the default overpayment withholding rate to 10% (or $10, whichever is greater) of a person's total monthly benefit. For many beneficiaries with an overpayment, this change significantly reduces the financial hardship they may face.

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"We are developing the systems updates so that in a few months our systems will automatically use the 10% default rate for new overpayments. But for now, our systems will continue to initially withhold 100% of a person's benefit to recover an overpayment. During this interim period, I am relying on our front-line staff to manually adjust the withholding for beneficiaries who request a lower rate. We appreciate you making these adjustments while we update our systems."

In simple words, the elderly and disabled recipients of Social Security retirement and disability benefits will no longer face the threat of imminent stoppage of all their benefits unless the clawback demand is repaid.

Instead, from this moment on, the clawback will be no larger than 10% of a person's monthly benefit, or $10, whichever is more.

Of special note, until the clawback form can be adjusted in the next two weeks, the commissioner instructs SSA employees to immediately adjust the withholding amount if anyone calls to complain!

That's YOUR call to action! If your benefits have been suspended or substantially reduced because of a clawback, you should immediately call the SSA at 800-772-1213 and ask for the 10% adjustment!

(The commissioner has also demanded that wait times be reduced for those calling in, and they are currently averaging only 31 minutes.)

Another big change

In testimony before Congress last week, Commissioner O'Malley announced another huge and immediate change: The burden of proof for a clawback will no longer be on the beneficiary but rather on the SSA itself.

Many clawback claims have been sent out without factual justification — a failure of due process required by law. How can a claimant asking for a waiver defend himself against an accusation of fraud or failure to report offsetting pensions, if the SSA loses the paperwork? Or if they cannot find a physician's report saying the person is no longer disabled?

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In his testimony to Congress, Commissioner O'Malley also promised to look into a statute of limitations on clawbacks. And he detailed other potential reforms, with details yet to come. Remaining to be resolved is whether people who already repaid clawback demands might be entitled to some sort of reopening of their cases — and potentially a refund if the agency cannot defend its claims with facts.

After years of abuse by Social Security representatives who dodged calls, refused to produce evidence justifying the clawbacks, denied waivers and generally gave seniors the run-around, it's exciting to see a new tone at the top of the agency.

The new commissioner understands the founding principles of both "equity and good conscience" and the requirement that the agency not "defeat the purposes of the (Social Security) Act" by depleting the life savings of beneficiaries below a stated percentage or threshold.

The commissioner's message: "We continue to review our overpayment procedures to identify ways to better serve our customers and uphold our stewardship responsibilities."

What a welcome relief to millions of Americans. And that's The Savage Truth.

(Terry Savage is a registered investment adviser and the author of four best-selling books, including "The Savage Truth on Money." Terry responds to questions on her blog at TerrySavage.com.)

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